

² The record provided to the Board includes evidence received after issuance of the September 12, 2017 decision. The Board's jurisdiction is limited to the evidence that was in the case record at the time of OWCP's final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether OWCP's hearing representative properly denied appellant's request for an oral hearing as untimely filed.

FACTUAL HISTORY

On July 8, 2015 appellant, then a 56-year-old transportation security officer, filed an occupational disease claim (Form CA-2) alleging right heel pain, which arose on or about March 1, 2015. She explained that it hurt to stand after sitting, and the pain, which radiated up her leg and pulled on her heel, wouldn't subside until after two to three minutes of walking.

In a July 15, 2015 report, Dr. Adric H. Huynh, a Board-certified family practitioner, noted that appellant complained of right heel pain that had been ongoing for several months, and that her pain was due to her job at the employing establishment. He also noted a prior history of left heel or Achilles surgical repair. Dr. Huynh examined appellant and obtained a right heel (calcaneus) x-ray.³ He diagnosed right heel pain and right Achilles tendinitis.

On July 21, 2015 the employing establishment controverted appellant's claim due to a lack of sufficient medical evidence. It also noted that appellant previously filed a similar claim, assigned OWCP File No. xxxxxx152, for injury to her left foot, and that she had been on modified duty for that injury since 2011, with limited walking and standing.

In a July 24, 2015 development letter, OWCP requested additional factual and medical evidence in support of appellant's claim. It specifically noted her prior claim, File No. xxxxxx152, accepted for left Achilles tendinitis, and the limited-duty assignment that appellant had been performing since 2011. OWCP asked that she describe in detail the employment-related activities that she believed caused or contributed to her current claimed condition. It afforded her 30 days to submit the requested information. No response was received.

By decision dated August 26, 2015, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the employment event(s) occurred as alleged.

On an appeal request form dated July 18, 2017, and postmarked July 19, 2017, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated September 12, 2017, OWCP's hearing representative denied appellant's request. She noted that appellant's request was postmarked July 19, 2017, which was more than 30 days after OWCP's August 26, 2015 decision. The hearing representative, therefore, found that the request was untimely. She also considered whether to grant a discretionary hearing, but denied such a hearing because the issue could equally well be addressed by appellant requesting reconsideration before OWCP and submitting new and relevant evidence not previously considered.

³ A July 15, 2015 right calcaneus x-ray revealed no acute right calcaneal osseous abnormalities. The x-ray report also noted that the site of pain corresponded to "posterior calcaneal enthesophyte, attachment of Achilles tendon."

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides that “a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his [or her] claim before a representative of the Secretary.”⁴ Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record.⁵ A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier’s date marking and before the claimant has requested reconsideration.⁶ Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant’s request and must exercise its discretion.⁷

ANALYSIS

Appellant requested an oral hearing on an appeal request form dated July 18, 2017 and postmarked on July 19, 2017. As this was more than 30 days after the August 26, 2015 OWCP decision, the hearing request was untimely filed. Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.⁸ Thus, the Board finds that appellant was not entitled to an oral hearing as a matter of right.

OWCP’s hearing representative has the discretionary power to grant an oral hearing when a claimant is not entitled to one as a matter of right. She exercised her discretion in the September 12, 2017 decision, finding that appellant’s issue could equally-well be addressed by requesting reconsideration before OWCP and submitting additional evidence. This basis for denying appellant’s request for a hearing is a proper exercise of the hearing representative’s discretionary authority.⁹ Accordingly, the Board finds that OWCP’s hearing representative properly denied appellant’s request for an oral hearing as it was untimely filed.

CONCLUSION

The Board finds that OWCP’s hearing representative properly denied appellant’s request for an oral hearing as untimely filed.

⁴ 5 U.S.C. § 8124(b)(1).

⁵ 20 C.F.R. §§ 10.616, 10.617.

⁶ *Id.* at § 10.616(a).

⁷ *Delmont L. Thompson*, 51 ECAB 155 (1999); *Eddie Franklin*, 51 ECAB 223 (1999).

⁸ *William F. Osborne*, 46 ECAB 198 (1994).

⁹ *Mary B. Moss*, 40 ECAB 640, 647 (1989).

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 11, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board